

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner
v

File No. 89317-001

Health Alliance Plan of Michigan
Respondent

**Issued and entered
this 23rd day of June 2008
by Ken Ross
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On April 21, 2008, XXXXX, on behalf of her minor son XXXXX (Petitioner), filed a request with the Commissioner of the Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On April 28, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

The issue in this matter can be decided by an analysis of the Health Alliance Plan of Michigan's HMO Subscriber Contract (the contract), the document that defines the Petitioner's health care coverage. It is not necessary to get a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

**II
FACTUAL BACKGROUND**

The Petitioner, born XXXXX, is a Health Alliance Plan of Michigan (HAP) member as an eligible dependent under his mother's group coverage. He has experienced gastroesophageal

reflux disease (GERD) since he was three months old and also has intolerance to any milk- or soy-based infant formulas. His pediatrician prescribed Nutramigen LIPIL[®] (Nutramigen), a hypoallergenic formula designed for babies who are sensitive to the protein found in milk- and soy-based formulas.

The Petitioner's mother requested coverage from HAP for the Nutramigen. When HAP denied coverage, the Petitioner appealed. The Petitioner exhausted HAP's internal grievance process and received its final adverse determination letter dated April 4, 2008.

III ANALYSIS

Petitioner's Argument

The Petitioner's mother explained her position in a letter to HAP dated March 17, 2008:

When my son was born, I had planned on breast-feeding him for a year as I did with my first son. I fed him for over three months, during which time I tried everything to be able to continue when it seemed that there was a problem with his tolerance. I cut every possible food/drink that I thought may be irritating his GERD in addition to experimenting with different GERD prescriptions. After much trial and error, we finally found a good mix with the Prevacid and also the Nutramigen formula. Recently, I tried to see if [the Petitioner] was ready for a reduced lactose formula. I gradually tried to switch him over and would mix an ounce or two of the new formula with the Nutramigen. Even with the small amount of low-lactose formula that I would give [him], he would regurgitate it immediately after drinking it. After that attempt, it took me almost 2 weeks to get him back on a regular schedule; he did not tolerate even that small amount of low-lactose formula. * * * I feel that the Nutramigen should be covered due to the fact that it is a specialized hypoallergenic formula which he specifically needs due to the fact that he has GERD. The Nutramigen, in combination with the Prevacid is part of the regimen that has finally worked for [him].

The Petitioner's pediatrician prescribed the Nutramigen. When the prescription was taken to the pharmacy to be filled, however, the pharmacist could not fill it because Nutramigen is not eligible for coverage under the Petitioner's prescription drug plan.

The Petitioner contends that since Nutramigen is medically necessary and the only formula that he can tolerate, that it should be covered by HAP. The Petitioner is seeking reimbursement for the Nutramigen already purchased as well as on-going coverage for the special formula.

HAP's Argument

In its final adverse determination, HAP denied coverage saying "formula is not a covered benefit under your policy and therefore the denial of your request for HAP to provide coverage for Nutramigen as well as the reimbursement of the formula you previously purchased must be upheld."

HAP maintains that Nutramigen, an infant formula, is not a covered benefit under the Petitioner's contract.

Commissioner's Review

HAP denied coverage because dietary food and food supplements are excluded in the contract. HAP cited the following provision in the contract (pp. 12, 15):

SECTION 5—EXCLUSIONS AND LIMITATIONS

The following are not covered under this contract:

5.1 Non-Covered Services

* * *

(o) Drugs, Dietary Drugs, Food and Food Supplements

- (1) Outpatient prescription drugs, unless specifically covered in Section 4.19.
- (2) Outpatient non-prescription (over-the counter) drugs.
- (3) Dietary drugs and food or food supplements.

This provision was amended by Rider 200 which added prescription drug coverage and also said:

The Section [in the contract] entitled **Exclusions and Limitations** is amended by deleting item numbers 1, 2 and 3 under Drugs, Dietary Drugs, Food and Food Supplements and replacing with the following:

1. Dietary food or food supplements with or without a prescription.

* * *

It is HAP's position that Nutramigen, which is sold over-the-counter at retail stores and does not require a prescription, is a dietary food and therefore excluded from coverage. The Commissioner agrees.

The Commissioner understands the Petitioner's argument. According to his mother, he has shown improvement since he began the regimen of Prevacid and Nutramigen. The Nutramigen has apparently helped him to control his GERD symptoms and avoid the health problems he experienced.

However, not all medically necessary services or products are covered benefits. Beyond the basic health services required in Section 3519 of the Insurance Code of 1956, MCL 500.3519, an HMO may decide what medical services and products are covered. In the Petitioner's contract there is no coverage for dietary food, even if it can be shown that the food serves an important medical need. The Commissioner finds that the Nutramigen is a dietary food that falls with the exclusion stated in amended Section 5 of the contract.

The Commissioner therefore finds that HAP's denial of coverage for the Nutramigen is consistent with its contract.

V ORDER

The Commissioner upholds HAP's April 4, 2008, final adverse determination. HAP properly denied coverage for Nutramigen under the terms of its contract.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner

of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.